IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2879 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 NO

SAVABHAI M DABHI

Versus

REGIONAL MANAGER

Appearance:

MR AM RAWAL for MS KUSUM M SHAH for Petitioner

MR PRANAV G DESAI for Respondent No. 1

NOTICE SERVED for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 21/09/2001

C.A.V. JUDGEMENT

1. By way of this petition under Article 226 of the Constitution filed against the Managers of a scheduled bank, the petitioner, a Farrash-cum-Messenger, has approached this Court with the prayer to set aside the order of termination of his service occasioned by

prolonged unauthorised absence.

2. By the order dated 13.4.1988, the respondent informed the petitioner that he was absenting from duties from 18.8.1987 without obtaining prior permission and was not reporting for duty even after written instructions dated 31.8.1987, 6.10.1987 and 9.11.1987. It was already made clear that if the petitioner failed to report for duty, it would be presumed that he had voluntarily retired from the bank's service. The letters of the bank were however being returned either with the remark "Addressee refused to accept" or "Addressee left without address". Thus, the service was terminated on the ground that the petitioner had failed to report for duty and had voluntarily retired. The order of the disciplinary authority of even date accompanying the said order stated that in terms of para XVI of the Bipartite Settlement dated 17.9.1984, the authority was satisfied that the petitioner had no intention of joining the bank and had voluntarily retired from service. The salary and allowances for one month in lieu of notice and other dues, if any, payable by the petitioner to the bank were also ordered to be recovered.

2.1 Through affidavits of the Regional Manager of the bank, it is elaborately stated that the petitioner absented without leave for 13 days in the year 1984-85 when he was a part-time employee. After his transfer to Palanpur and during the period from November 1985 to November 1986, the petitioner remained on leave on loss of pay on six occasions for a total period of 8 months and 28 days. During the year 1987, the petitioner went on leave without pay on 9 occasions for a period of 3 months and 16 days. He was absent from duty from 18.8.1987 to 4.8.1988, i.e. for a period of almost a year. Thus, the total absence on extraordinary leave was more than 20 months, whereas, as per the leave Rules applicable to the employees of the bank, the maximum permissible limit for sanction of extraordinary leave is 12 months during the period of entire service. By a letter dated 16.12.1987, the petitioner was informed that his absence was in contravention of the Rules governing the service conditions and that he should report for duty within 30 days failing which he would be deemed to have voluntarily retired from service.

2.2 The respondents have relied upon paragraph 478 (10) of the All India Tribunal (Bank Disputes) Award, according to which, an employee is, before proceeding on leave, required to intimate to the competent authority his address while on leave and also keep the authority

informed about any change in the address previously furnished.

3. The petitioner has, according to the petition itself, absented himself without leave, left his house also and never informed the bank about any change of address even as his wife continued to live at the same place. The petitioner has also admittedly not made any attempt at furnishing any explanation for absence without leave or for reporting for duty till the aforesaid order of termination was passed.

4. The learned counsel for the petitioner harped upon the submission that the order terminating the service of the petitioner was punitive and no opportunity of hearing having been granted, it violated the principles of natural justice. Examining the foundation of the impugned order of termination in that context, it was seen that it was grounded upon the provisions in para XVI of the Settlement dated 17.9.1984, which reads as under:

" In supersession of Clause 2 of the settlement dated 8th September 1983, the following shall apply:

Where an employee has not submitted any application for leave and absents himself from work for a period of 90 or more consecutive days without or beyond any leave to his credit or absents himself for 90 days or more consecutive days beyond the period of leave originally sanctioned or subsequently extended or where there is satisfactory evidence that he has taken upon employment in India or the management is satisfied that he has no present intention of joining duties, the management may at any time thereafter give a notice to the employee's last known address calling upon the employee to report for duty within 30 days of the notice, stating, inter alia, the grounds for the management coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days or unless he gives an explanation for his absence satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of

the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service."

5. There is no dispute about the fact that the above Clause in the Settlement was binding and applicable. It contains the built-in safeguards and provides for an opportunity of being heard to the employee. If the employee fails to avail the opportunity to dispel the inference that he had voluntarily retired from the bank's service, he cannot be heard to make a grievance that the principles of natural justice were violated or that he was condemned unheard.

6. In these facts and circumstances, this is not a fit case in which the extraordinary powers of this Court should be invoked or exercised. Accordingly, the petition is dismissed and Rule is discharged with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)